

M e m o r a n d u m

Date: May 26, 2006

To: The Commission
(Meeting of May 25, 2006)

From: Delaney Hunter, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 2207 (Blakeslee) – Energy resources: thermal powerplants.**
As Amended March 28, 2006

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: Support.

SUMMARY OF BILL: This bill would repeal the sunset date on the California Energy Commission's (CEC) six-month power plant siting process. The six-month process, which will sunset on January 1, 2007, is an alternative to the CEC's standard 12-month siting process.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION: The availability of a shorter power plant siting process has the potential to benefit Load-Serving Entities (LSEs) that must comply with California Public Utilities Commission (Commission) general procurement, renewables procurement, and Resource Adequacy Requirement (RAR) obligations. Whether LSEs buy or build needed capacity, the availability of an expedited power plant siting process can provide LSEs and merchant power plant developers with shorter development lead times, which can facilitate procurement and compliance, and reliability.

SUMMARY OF SUGGESTED AMENDMENTS: None.

DIVISION ANALYSIS (Energy):

- According to the bill analysis prepared by the Assembly Committee on Utilities and Commerce,¹ the original six-month siting process took effect in 2001 and was set to expire at the end of 2003, but was extended through the end of 2006:

¹ Assembly Committee on Utilities and Commerce, Bill Analysis, April 14, 2006, http://www.leginfo.ca.gov/pub/bill/asm/ab_2201-2250/ab_2207_cfa_20060414_123558_asm_comm.html

"History: In the summer of 2000, San Diego's electric ratepayers found themselves on the leading edge of California's electricity crisis when they were subjected to bill increases of 50% or more. Some of the blame for the crisis was placed on California's process for siting power plants, administered through the CEC, which was characterized as cumbersome and slow.

"In response, the Legislature passed AB 970 (Ducheny), Chapter 329, Statutes of 2000, which required the CEC to develop an expedited siting process for environmentally benign power plants to cut the siting timeline from one year to six months. The 6 month process can be applied to power plants that won't cause a significant impact on the environment or the electrical system, and will comply with all applicable standards, ordinances, or laws.

"During the 12-month process, the CEC conducts a detailed review of the proposal. If significant impacts are identified or if the project does not conform to applicable laws, ordinances, regulations or standards, the CEC will work with the applicant, agencies and the public to develop mitigation measures to address the impacts or non-compliance issues.

"The statute creating this expedited processing expired at the end of 2003. The sunset provision was extended to January 1, 2007, by SB 1776 (Bowen), Chapter 245, Statutes of 2004."

- Only two projects (out of fourteen) were certified as six-month applications:²

"Did The Expedited Siting Process Work? : According to the CEC, they received 14 expedited 6-month applications since 2001; 4 applications were withdrawn because of inadequate data; 4 applications were determined to be data adequate for the 12-month process only and were processed as such; four of the applications that started as 6-month projects were later converted to 12-month applications. The conversion to 12-month applications was either because the applications provided insufficient data which disqualified them from the six-month review or they developed technical or scheduling issues or the developer did not want to start construction within one year of receiving a decision. Only two projects were certified as six-month applications" (Assembly Committee on Utilities and Commerce, Bill Analysis, April 14, 2006, page.2).

PROGRAM BACKGROUND: The shorter the power plant siting process, the faster LSEs and merchant power plant developers can bring plants online. With regard to Resource Adequacy year-ahead or monthly filings, LSEs cannot count capacity (1) on a year-ahead basis (May-September 2008) unless it is online by September 30, 2007, or (2) on a month-ahead basis unless it is online 30 days beforehand.

² *Id.*

LEGISLATIVE HISTORY: AB 970, by then Assemblymember Ducheny (Chapter 329, Statutes of 2000), required the CEC to develop an expedited siting process for environmentally benign power plants to cut the siting timeline from one year to six months. This expedited process was set to expire at the end of 2003. However, this sunset provision was extended to January 1, 2007, by SB 1776 Senator Bowen (Chapter 245, Statutes of 2004). AB 2207 would extend it indefinitely.

FISCAL IMPACT ON CPUC: None.

STATUS: The bill is in the Assembly Utilities & Commerce Committee (no date set).

SUPPORT/OPPOSITION:

Support:

Pacific Gas & Electric (PG&E)
Southern California Edison (SCE)
Southern California Public Power Authority (SCPPA)

Opposition:

California State Association of Electrical Workers
California State Pipe Trades Council
California Coalition of Utility Employees (CUE)
Sierra Club California
Western States Council of Sheet Metal Workers

STAFF CONTACTS:

Delaney Hunter	dlh@cpuc.ca.gov
Director – Office of Governmental Affairs	(916) 327-7878

Tom Flynn	trf@cpuc.ca.gov
Staff – Office of Governmental Affairs	(916) 324-8689

Sean Gallagher	shg@cpuc.ca.gov
Director - Energy Division	415-703-2059

Robert Strauss	rls@cpuc.ca.gov
Supervisor - Energy Division	415-703-5289

Wade McCartney	wsm@cpuc.ca.gov
Staff - Energy Division	916-324-9010

BILL LANGUAGE:

BILL NUMBER: AB 2207 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY MARCH 28, 2006

INTRODUCED BY Assembly Member Blakeslee

FEBRUARY 22, 2006

~~An act to amend Sections 399.12 and 399.13 of the Public Utilities Code, relating to energy.~~ An act to add Sections 25550 and 25550.5 to the Public Resources Code, relating to energy resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 2207, as amended, Blakeslee ~~California Renewables Portfolio Standard Program: credits.~~ Energy resources: thermal powerplants.

Existing law provides for the restructuring of California's electric power industry so that the price for the generation of electricity is determined by a competitive market. Existing law, until January 1, 2007, requires the State Energy Resources Conservation and Development Commission to establish a process for the expedited review of applications to construct and operate thermal powerplants and related facilities and for the expedited review of repowering projects.

This bill would reinstate those provisions and extend them indefinitely.

~~The Public Utilities Act imposes various duties and responsibilities on the Public Utilities Commission with respect to the purchase of electricity and requires the commission to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program. The program requires that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, but not including local publicly owned electric utilities, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end use customers each calendar year (renewables portfolio standard). Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, to ensure that renewable energy output is counted only once for the purpose of meeting the renewables portfolio standard of this state or any other state, and for verifying retail product claims in this state or any other state.~~

~~This bill would also require the Energy Commission to issue renewable energy credits, as defined, for electricity generated by eligible renewable energy resources.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 25550 is added to the Public Resources Code, to read:

25550. (a) Notwithstanding subdivision (a) of Section 25522 and Section 25540.6, the commission shall establish a process to issue its final certification for any thermal powerplant and related facilities within six months after the filing of the application for certification that, on the basis of an initial review, shows that there is substantial evidence that the project will not cause a significant adverse impact on the environment or electrical system and will comply with all applicable standards, ordinances, or laws. For purposes of this section, filing has the same meaning as in Section 25522.

(b) Thermal powerplants and related facilities reviewed under this process shall satisfy the requirements of Section 25520 and other necessary information required by the commission, by regulation, including the information required for permitting by each local, state, and regional agency that would have jurisdiction over the proposed thermal powerplant and related facilities, but for the exclusive jurisdiction of the commission, and the information required for permitting by each federal agency that has jurisdiction over the proposed thermal powerplant and related facilities.

(c) After acceptance of an application under this section, the commission shall not be required to issue a six-month final decision on the application if it determines there is substantial evidence in the record that the thermal powerplant and related facilities may result in a significant adverse impact on the environment or electrical system or does not comply with an applicable standard, ordinance, or law. Under this circumstance, the commission shall make its decision in accordance with subdivision (a) of Section 25522 and Section 25540.6, and a new application shall not be required.

(d) For an application that the commission accepts under this section, all local, regional, and state agencies that would have had jurisdiction over the proposed thermal powerplant and related facilities, but for the exclusive jurisdiction of the commission, shall provide their final comments, determinations, or opinions within 100 days after the filing of the application. The regional water quality control boards, as established pursuant to Chapter 4 (commencing with Section 13200) of Division 7 of the Water Code, shall retain jurisdiction over any applicable water quality standard that is incorporated into any final certification issued pursuant to this chapter.

(e) Thermal powerplants and related facilities that demonstrate superior environmental or efficiency performance shall receive priority in review.

(f) With respect to a thermal powerplant and related facilities reviewed under the process established by this chapter, it shall be shown that the applicant has a contract with a general contractor and has contracted for an adequate supply of skilled labor to construct, operate, and maintain the plant.

(g) With respect to a thermal powerplant and related facilities reviewed under the process established by this chapter, it shall be shown that the thermal powerplant and related facilities complies with all regulations adopted by the commission that ensure that an

application addresses disproportionate impacts in a manner consistent with Section 65040.12 of the Government Code.

(h) To implement this section, the commission may adopt emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 2 of Division 3 of Title 2 of the Government Code. For purposes of that chapter, including without limitation, Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, safety, and general welfare.

SEC. 2. Section 25550.5 is added to the Public Resources Code, to read:

25550.5. (a) Notwithstanding subdivision (a) of Section 25522 and Section 25540.6, the commission shall establish a process to issue its final decision on an application for certification for the repowering of a thermal powerplant and related facilities within 180 days after the filing of the application for certification that, on the basis of an initial review, shows that there is substantial evidence that the project will not cause a significant adverse impact on the environment or electrical system and that the project will comply with all applicable standards, ordinances, regulations, and statutes. For purposes of this section, filing has the same meaning as in Section 25522.

(b) The repowering of a thermal powerplant and related facilities reviewed under this process shall satisfy the requirements of Section 25520 and other necessary information required by the commission by regulation, including the information required for permitting by each local, state, and regional agency that would have jurisdiction over the proposed repowering of a thermal powerplant and related facilities, but for the exclusive jurisdiction of the commission, and the information required for permitting by each federal agency that has jurisdiction over the proposed repowering of a thermal powerplant and related facilities.

(c) After an application is filed under this section, the commission shall not be required to issue a final decision on the application within 180 days if it determines there is substantial evidence in the record that the thermal powerplant and related facilities may result in a significant adverse impact on the environment or electrical system or does not comply with an applicable standard, ordinance, regulation, or statute. Under this circumstance, the commission shall make its decision in accordance with subdivision (a) of Section 25522 and Section 25540.6, and a new application shall not be required.

(d) For an application that the commission accepts under this section, any local, regional, or state agency that would have had jurisdiction over the proposed thermal powerplant and related facilities, but for the exclusive jurisdiction of the commission, shall provide its final comments, determinations, or opinions within 100 days after the filing of the application. The regional water quality control board, as established pursuant to Chapter 4 (commencing with Section 13200) of Division 7 of the Water Code, shall retain jurisdiction over any applicable water quality standard that is incorporated into any final certification issued pursuant to this chapter.

(e) The repowering of a thermal powerplant and related facilities that demonstrate superior environmental or efficiency performance improvement shall receive first priority in review by the commission.

(f) With respect to the repowering of a thermal powerplant and related facilities reviewed under the process established by this chapter, it shall be shown that the applicant has contracted with a general contractor and has contracted for an adequate supply of skilled labor to construct, operate, and maintain the plant.

(g) With respect to a repowering of a thermal powerplant and related facilities reviewed under the process established by this chapter, it shall be shown that the thermal powerplant and related facilities complies with all regulations adopted by the commission that ensure that an application addresses disproportionate impacts in a manner consistent with Section 65040.12 of the Government Code.

(h) To implement this section, the commission may adopt emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that chapter, including, without limitation, Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, safety, and general welfare.

(i) For purposes of this section, "repowering" means a project for the modification of an existing generation unit of a thermal powerplant that meets all of the following criteria:

(1) The project complies with all applicable requirements of federal, state, and local laws.

(2) The project is located on the site of, and within the existing boundaries of, an existing thermal facility.

(3) The project will not require significant additional rights-of-way for electrical or fuel-related transmission facilities.

(4) The project will result in significant and substantial increases in the efficiency of the production of electricity, including, but not limited to, reducing the heat rate, reducing the use of natural gas, reducing the use and discharge of water, and reducing air pollutants emitted by the project, as measured on a per kilowatthour basis.

~~SECTION 1. Section 399.12 of the Public Utilities Code is amended to read:~~

~~399.12. For purposes of this article, the following terms have the following meanings:~~

~~(a) "Eligible renewable energy resource" means an electric generating facility that is one of the following:~~

~~(1) The facility meets the definition of "in state renewable electricity generation facility" in Section 25741 of the Public Resources Code.~~

~~(2) A geothermal generation facility originally commencing operation prior to September 26, 1996, shall be eligible for purposes of adjusting a retail seller's baseline quantity of eligible renewable energy resources except for output certified as incremental geothermal production by the Energy Commission, provided that the incremental output was not sold to an electrical corporation under contract entered into prior to September 26, 1996. For each facility seeking certification, the Energy Commission shall determine historical production trends and establish criteria for measuring incremental geothermal production that recognizes the declining output of existing steamfields and the contribution of capital investments in the facility or wellfield.~~

~~—(3) The output of a small hydroelectric generation facility of 30 megawatts or less procured or owned by an electrical corporation as of the date of enactment of this article shall be eligible only for purposes of establishing the baseline of an electrical corporation pursuant to paragraph (3) of subdivision (a) of Section 399.15. A new hydroelectric facility is not an eligible renewable energy resource if it will require a new or increased appropriation or diversion of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.~~

~~—(4) A facility engaged in the combustion of municipal solid waste shall not be considered an eligible renewable resource unless it is located in Stanislaus County and was operational prior to September 26, 1996. Output from such facilities shall be eligible only for the purpose of adjusting a retail seller's baseline quantity of eligible renewable energy resources.~~

~~—(b) "Energy Commission" means the State Energy Resources Conservation and Development Commission.~~

~~—(c) "Renewable energy credit" means a certificate of proof, issued through the accounting system establish by the Energy Commission pursuant to Section 399.13, that a unit of electricity was generated by an eligible renewable energy resource and delivered to a retail seller or the Independent System Operator. The Energy Commission shall not issue a renewable energy credit unless it verifies that the unit of electricity for which the credit is issued was generated in accordance with all renewable and environmental requirements applicable to the generating eligible renewable energy resource, and shall rely on the definition of "renewable energy credit" adopted as a standard term by the commission. Any electricity generated by an eligible renewable energy resource attributable to the use of nonrenewable fuels, beyond a de minimus quantity, as determined by the Energy Commission, shall not result in the issuance of any renewable energy credit.~~

~~—(d) "Renewables portfolio standard" means the specified percentage of electricity generated by eligible renewable energy resources that a retail seller, as defined in this section, is required to procure pursuant to Sections 399.13 and 399.15.~~

~~—(e) "Retail seller" means an entity engaged in the retail sale of electricity to end use customers, including any of the following:~~

~~—(1) An electrical corporation, as defined in Section 218.~~

~~—(2) A community choice aggregator. The commission shall institute a rulemaking to determine the manner in which a community choice aggregator will participate in the renewables portfolio standard subject to the same terms and conditions applicable to an electrical corporation.~~

~~—(3) An electric service provider, as defined in Section 218.3 subject to the following conditions:~~

~~—(A) An electric service provider shall be considered a retail seller under this article for sales to any customer acquiring service after January 1, 2003.~~

~~—(B) An electric service provider shall be considered a retail seller under this article for sales to all its customers beginning on the earlier of January 1, 2006, or the date on which a contract between an electric service provider and a retail customer expires. Nothing in this subdivision may require an electric service provider to disclose the terms of the contract to the commission.~~

~~—(C) The commission shall institute a rulemaking to determine the manner in which electric service providers will participate in the~~

~~renewables portfolio standard. The electric service provider shall be subject to the same terms and conditions applicable to an electrical corporation pursuant to this article. Nothing in this paragraph shall impair a contract entered into between an electric service provider and a retail customer prior to the suspension of direct access by the commission pursuant to Section 80110 of the Water Code.~~

~~— (4) "Retail seller" does not include any of the following.~~

~~— (A) A corporation or person employing cogeneration technology or producing power consistent with subdivision (b) of Section 218.~~

~~— (B) The Department of Water Resources acting in its capacity pursuant to Division 27 (commencing with Section 80000) of the Water Code.~~

~~— (C) A local publicly owned electrical utility as defined in subdivision (d) of Section 9604.~~

~~— SEC. 2. — Section 399.13 of the Public Utilities Code is amended to read:~~

~~— 399.13. The Energy Commission shall do all of the following:~~

~~— (a) Certify eligible renewable energy resources that it determines meet the criteria described in subdivision (a) of Section 399.12.~~

~~— (b) Design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, to ensure that renewable energy output is counted only once for the purpose of meeting the renewables portfolio standard of this state or any other state, to issue renewable energy credits for electricity generated by eligible renewable energy resources, and to verify retail product claims in this state or any other state. In establishing the guidelines governing this system, the Energy Commission shall collect data from electricity market participants that it deems necessary to verify compliance of retail sellers, in accordance with the requirements of this article and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). In seeking data from electrical corporations, the Energy Commission shall request data from the commission. The commission shall collect data from electrical corporations and remit the data to the Energy Commission within 90 days of the date of that request.~~

~~— (c) Allocate and award supplemental energy payments pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, to eligible renewable energy resources to cover above market costs of renewable energy.~~

____ CORRECTIONS

Text -- Pages 2, 3, 4, 5, and 6.